

Order

Michigan Supreme Court
Lansing, Michigan

April 10, 2009

Marilyn Kelly,
Chief Justice

138045

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

v

SC: 138045
COA: 288942
Wayne CC: 08-006070-02

DAMON NATHANIEL,
Defendant-Appellee.

On order of the Court, the application for leave to appeal the November 26, 2008 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.

WEAVER, J., would remand this case to the Court of Appeals as on leave granted.

MARKMAN, J. (*dissenting*).

Defendant was charged with murder, and the trial court suppressed evidence of his confession. The prosecutor appealed and the Court of Appeals denied leave to appeal “for failure to persuade the Court of the need for immediate appellate review.” This reason is simply inapt. See, *People v Yost*, 468 Mich. 122, 124 n 2 (2003). If defendant proceeds to trial and is found guilty, any subsequent appeal will not consider whether the evidence at preliminary examination was sufficient to warrant a bindover.

The time for review of the trial court’s suppression order is now, or never. If the defendant’s confession remains suppressed, the prosecutor will either have to dismiss the charges because its evidence independent of the confession is inadequate, or the prosecutor will be forced to proceed to trial without the prosecutor’s strongest piece of evidence. Thus, I would remand to the Court of Appeals for consideration as on leave granted.



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 10, 2009

Corbin R. Davis

Clerk